PROVO RESERVIOR COMPANY, a corporation,

Plaintiff,

PROVO CITY, et al,

Defendants.

No. 2888 Civil

SPECIAL REPORT OF WATER
COMMISSIONER

November 23, 1922.

WHEREAS, the final decree in the above entitled cause filed perein provides, among other things, the following:

It is further ordered, adjudged and decreed, that all persons and corporations, parties to this action, shall respectively construct or cause to be constructed at their own expense and under the direction and supervision of the water Commissioner appointed by the Court proper appliances for the diversion and accurate measurement of the waters awarded to them respectively; and thereafter shall maintain and keep in place all dams, head-gates, flumes, canals and other means by which water is diverted, conveyed or used, in a good state of repaid, together with appliances for the diversions and measurement of said water; to the end that no unnecessary loss from seepage or leakage shall occur, and that the water shall be economically applied to the use for which it is awarded.

WHEREAS, Section 134 of said final decree provides that the above entitled court shall and does retain jurisdiction of the above entitled cause, among other things, asfollows:

This court, however, at all times, retains jurisdiction of this case and the subject matter thereof and all the parties thereto their successors and assigns, for the purpose of from time to time making such further orders, rules and regulations as are necessary for the regulation, control and distribution of said waters according to the terms of this Decree, and for the purpose of compelling by further decree or otherwise the construction of such improvements, dams, weirs, and appliances as may from time to time be found necessary or expedient for the proper carrying out of the terms of this Decree and for the equitable and economical distribution of said waters, and for the further purpose of compelling the payment of such sums by either or any or all of the parties hereto, for the costs and expenses of improvements and the distribution of said waters, and the compensation of said Commissioner and assistants, as may by the Court seem just and equitable, and for the further purpose of carrying the terms and provisions of this Decree into full force and effect, and to punish the parties hereto, their officers, agents and employees, and their grantees and successors in interest, for any violations of the provisions thereof.

entered in the above entitled cause on the 26th day of September 1921, ordered the Water Commissioner to prepare and file plans and specifications for the headgates and diverting works necessary to be constructed near the Mouth of Provo Canyon, in Utah County, Utah, which said headgates and diversion works were and are necessary for the distribution of waters of said Provo River to the Upper East Union Irrigation Company and to the East River Bottom Water Company, two of the defendants named in the above entitled action, and said plans and specifications were thereafter, to-wit, or or about the 10th day of November, 1921 filed with the Clerk of said Court in the above entitled cause, as ordered by the Court and copies of which said plans, and specifications were thereafter, to-wit, on or about the 4th day of January 1922, delivered to and served upon each of said defendants, to-wit. Upper East Union Irrigation Company and East River Bottom Water Company; and

WHEREAS, thereafter, to-wit, on or about the 23rd day of October, 1922, the said defendants, Upper East Union Irrigation Company and East River Bottom Water Company, jointly commenced the construction of head gates and diversion works at the head of City Creek, near the Mouth of Provo Canyon, on the Provo River System, and said defendants in commencing and constructing said head gates and diversion works ignored and failed and refused to follow, use or be guided by the said plans and specifications filed by the Water Commissioner herein; and

WHEREAS, on or about the 27th day of October, 1922, the said Water Commissioner served notice upon the said defendats above named that plans and specifications were drawn and filed for the gates and dams near the Mouth of Provo Canyon, and at the point near where they were building, and that said plans and specifications were on file in the above entitled cause, and that by said water Commissioner, said defendats were advised that if they proceeded with the construction of said diversion works without following the plans and specifications filed by the Water Commissioner, and

were further advised, before proceeding, to consult the Decree of the Court in the above entitled cause in regard to such mataters; a full, true and correct copy of said notice which was served upon said defendants is hereto attached, marked "Exhibit A" and made a part of this report; and

WHEREAS, in said notice served upon the defendants hereinabove referred to, the Water Commissioner disclaimed any ly responsibility, either physical/or legally, if said defendants proceeded as their individual plans called for; and

WHEREAS, said defendants, notwithstanding, said notice and the fact that said plans and specifications prepared by the Water Commissioner herein, under the order of the Court, as aforesaid, were filed and copies served upon said defendants, said defendants proceeded with and did construct date, head gates and diversion works at the head of City Creek on the Provo River system, contrary to said notice and against the orders, and with the disapproval, of the office of the Water Commissioner herein;

NOW THEREFORE, I, T. F. Wentz, duly appointed, qualified and acting Water Commissioner in the above entitled cause do hereby report to the Enorable Court above named that the Upper East Union Irrigation Company and the East River Bottom Water Company, two of the defendants named in the above and foregoing action, did, during the months of October and November, 1922, without the approval and consent, and contrary to the advice and direction of said Water Commissioner, build and construct certain and head gates at the head of City Creek on the Provo River System, which said demand head gates were not built in accordance with the plans, specifications and estimates filed herein by said Water Commissioner for the building of the same;

And I hereby further report that before said dams, head gates and diversions works were completed, at or about the time of the commencement of the building of the same, I notified said defendants and each of them, that the Water Commissioner would not be responsible for any damage, either physically or legally, or

otherwise, that may or might be incurred by any person or persons by reason of their building said de me without following the provisions of the Decree of the Court in the above entitled matter, and following the plans, specifications and estimates of the Water Commissioner for such construction work.

I hereby made this report for the purpose of making the record complete and showing the transactions of the Water Commissioner and his office in the above entitled manner, and making a record for the purpose of protecting said Water Commissioner and his office from any liability whatsoever by reason of the failure, neglect and refusal of said defendants. Upper East Union Irrigation Company and East River Bottom Water Company to build and construct their dams, head gates, diversions works in conformity with the Decree in the above entitled cause, and under the direction and supervision and according to the plans, specifications and estimates of the Water Commissioner herein.

Respectfully submitted this 234 day

of November, 1922.

STATE OF UTAH COUNTY OF UTAH

T. F. Wentz, being first duly sworn, deposes and says: That he is the Water Commissioner who makes and files the above and foregoing Special Report; that he has read said report and knows the contents thereof; that the same is true of his own knowledge. except as to matters therein stated upon information and belief.

and as to these he believes it to be true.

Piber and sworn to before me this? day of November,

No. 2888 Civil.

Provo, Utah, Oct. 27, 1922 .

Upper East Union Irrigation Co.

East River Bottom Water Co.

RE. Construction of Gates at Head City Creek.

Provo, Utah.

Gentlemen:

You will recall that upon the Order of the Court Plans and Specifications were drawn for construction of Gates and Dams near Mount of Provo Canyon. Said Plans and Specifications are or file in the above entitled cause, a copy of which has been furnished each of you.

I observe on site of City Creek Headgates, and am informed by your foreman, Mr. T. F. Farrer, that you do not propose to follow the Plans and Specifications above referred to.

Should you proceed and construct gates, as staked out on ground, it is with the disapproval of this office, and you assume all responsibility both physically and legally, therefor.

You are also advised, before proceeding to consult the Court's Decree in regard to these matters.

Resp.

T. F. Wentz, Commissioner

Copy by Registered mail to John Roundy, Director Upper East Union. " " Fred Ferguson, President, E. R. Bot. W. Co.

"Exhibit A"

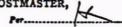


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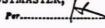
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Provo Reservoir Company vs. Frovo City, et al.

No. 2888 Civil.

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Commissionor

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